IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

CRL.A.No. 11 of 1999()

S.T.NO.93/1998 ON THE FILE OF THE JUDICIAL I CLASS MAGISTRATE, CHITTUR

APPELLANT: COMPLAINANT:

MANOHARAN, S/O.MADHAVA MANNADIAR, 5TH MILE, KUTTIPALLAM, CHITTUR.

BY ADV. SRI.P.RAMAKRISHNAN NAIR

RESPONDENT: ACCUSED:

RADHADEVI, W/O.DIVAKARAN, 5TH MILE, OTHENATHU HOUSE, MANNADIAR LANE, CHITTUR.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. No. 11 of 1999

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Dated this the 31st day of May, 2007

JUDGMENT

The appeal is filed by the complainant against the judgment in S.T. Case No.93/1998 on the file of the Court of the Judicial First Class Magistrate, Chittur. The complaint was filed under section 138 of the Negotiable Instruments Act. The case of the appellant is that the respondent and her husband borrowed an amount of Rs.45,000/- from him on 31-12-1996 and they had executed a promissory note on the same day. It is also stated that on demand of the amount, the respondent issued a cheque for Rs.50,000/- and when it was presented for encashment, the same was dishonoured on the ground of insufficiency of funds in the account of the respondent. On receipt of intimation of dishonor of the cheque , a lawyer's notice was caused to the respondent demanding of the amount covered by the cheque. To the said notice, the respondent had given a reply stating that she had not borrowed any amount as alleged in the complaint and she was a subscriber in the kuri conducted by the appellant and towards the said

transaction he had obtained the signed cheque as a security and the same was misused by him. To prove the case, the respondent produced Exts.D1 and D2 pass books, which were marked when PW1, the appellant, was examined in the Court. After considering the entire evidence, the trial court found that the conduct of the appellant fortify the case of the respondent that the appellant received the signed promissory note and blank signed cheque towards the chitty transaction as a security. Hence, the respondent was acquitted.

2. Heard.

3. Learned counsel for the appellant submits that the trial court has not considered the entire evidence while acquitting the respondent.

4. The specific case of the appellant is that the respondent had borrowed an amount of Rs.45,000/- and in discharge of that amount he had issued Ext.P1 cheque. The further case of the appellant is that the respondent had also issued a promissory note of Rs.45,000/- and for realization of the said amount, he filed a suit before the Munsiff's Court. The trial court after taken in to consideration all the facts and circumstances of the case found that the appellant failed to prove that the cheque in question was issued in discharge of a legally enforceable debt. At the same time the trial court found that the case set up by the respondent is more

probable and even if any presumption is available to the appellant under section 139 of the Act, the same was rebutted by the respondent by adducing cogent and convincing evidence.

5. In the above circumstances, the impugned judgment requires no interference by this Court. Even if a second view is possible in appreciating the evidence, unless and until compelling reasons are there, this Court is not proposed to interfere with the impugned judgment. Hence, the appeal fails and it stands dismissed.

K. Thankappan,
Judge.

K. Thankappan,J.

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Judgment
31-5-2007